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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
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11 LEGALZOOM.COM,

12 Plaintiff,

13 v.

14 ROCKET LAWYER INC.,

15 Defendant.  
16

Case No. 15-mc-80003 NC

CDCA Case No. 12-cv-00942 GAF

**ORDER DENYING  
LEGALZOOM.COM'S MOTION TO  
COMPEL AGAINST NON-PARTY  
GOOGLE, INC.**

Re: Dkt. No. 1

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18 In this false advertising and unfair business practices case, plaintiff LegalZoom  
19 moves to compel the production of documents subpoenaed from non-party Google.  
20 LegalZoom contends that because there were "significant gaps" in the production of  
21 documents it received from defendant Rocket Lawyer, it needs Google to fill those gaps.  
22 Under Federal Rule of Civil Procedure 45, when a party demands documents from a non-  
23 party, it must take "reasonable steps" to avoid imposing an undue burden or expense on the  
24 third party. This Court finds that LegalZoom did not take "reasonable steps" to confine its  
25 requests to Google, so the motion to compel is denied.

26 **BACKGROUND**

27 This discovery motion arises from a dispute in the U.S. District Court for the Central  
28 District of California between competitors LegalZoom and Rocket Lawyer. According to

1 LegalZoom, it is an online provider of “legal solutions.” Dkt. No. 1 at 4. LegalZoom  
2 asserts that Rocket Lawyer engaged in false advertising and unfair business practices when  
3 it used the term “free” in advertising for its services.

4 LegalZoom asserts that it learned from documents produced by Rocket Lawyer that  
5 Google had communications with Rocket Lawyer about the free advertisements. In the  
6 underlying case, on November 10, 2014, District Court Judge Gary A. Feess ordered that  
7 LegalZoom would be allowed additional time to conduct discovery, including from Google  
8 relating to Google’s inquiry into Rocket Lawyer’s free advertisements. Dkt. No. 1, Ex. A.  
9 On November 14, 2014, LegalZoom served Google with a subpoena seeking four categories  
10 of documents: (1) Any and all documents relating to Rocket Lawyer free advertisements;  
11 (2) Any and all communications between Google and Rocket Lawyer relating to Rocket  
12 Lawyer free advertisements; (3) Any and all documents relating to studies managed or  
13 performed by Google Ventures for Rocket Lawyer, to the extent those studies examine or  
14 concern Rocket Lawyer free advertisements; and (4) Any and all documents sufficient to  
15 identify contact information for a specified Google employee.

16 As to the first three categories, Google objected that the requests were overly broad  
17 and unduly burdensome and should be demanded from Rocket Lawyer in the first instance.  
18 When served by LegalZoom, the subpoenas sought documents for the time period January  
19 1, 2008, to present. After Google objected to the scope of the subpoenas, LegalZoom  
20 agreed to modify the requests to the four-year period of January 1, 2010, through December  
21 31, 2013. Dkt. No. 1 at 6. As to the fourth category, Google provided information to  
22 LegalZoom and the parties resolved their dispute before the hearing.

23 After a meet and confer process, full briefing, and a tentative ruling did not resolve  
24 the motion to compel, this Court held a hearing on February 25, 2015. Dkt. No. 9.

### 25 **LEGAL STANDARD**

26 Federal Rules of Civil Procedure 26 and 45 govern discovery from non-parties. Rule  
27 26 allows a party to obtain discovery concerning any nonprivileged matter that is relevant to  
28 any party’s claim or defense. Fed. R. Civ. P. 26(b)(1). Information is relevant when it will

1 be admissible at trial or when the evidence is “reasonably calculated to lead to the discovery  
2 of admissible evidence.” *Id.* The Rule 26 relevancy standard also applies to subpoenas to  
3 non-parties. *Beinin v. Ctr. for Study of Popular Culture*, No. 06-cv-02298 JW (RS), 2007  
4 WL 832962, at \*2 (N.D. Cal. Mar. 16, 2007). Rule 45, in turn, provides that a party may  
5 command a non-party to testify at a deposition and “produce designated documents,  
6 electronically stored information, or tangible things in that person’s possession, custody, or  
7 control.” Fed. R. Civ. P. 45(a)(1)(A)(iii).

8 Even if a subpoena to a non-party seeks relevant information, the Court must limit  
9 discovery if “the discovery sought . . . can be obtained from some other source that is more  
10 convenient, less burdensome, or less expensive” or if “the burden or expense of the  
11 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 45(d)(1); Fed. R. Civ. P.  
12 26(b)(2)(C)(i); *see Nalco Co. v. Turner Designs, Inc.*, No. 13-cv-02727 NC, 2014 WL  
13 1311571, at \*1 (N.D. Cal. Mar. 31, 2014) (denying motion to compel because subpoenaing  
14 party failed to take reasonable steps to avoid imposing undue burden); *In re NCAA Student-*  
15 *Athlete Name & Likeness Licensing Litig.*, No. 09-cv-01967 CW (NC), 2012 WL 629225, at  
16 \*1 (N.D. Cal. Feb. 27, 2012) (“[B]ecause antitrust plaintiffs did not make reasonable  
17 attempts to avoid imposing an undue burden on the nonparties, sanctions against antitrust  
18 plaintiffs are warranted under Rule 45.”); *Convolve, Inc. v. Dell, Inc.*, No. 10-cv-80071  
19 WHA, 2011 WL 1766486, at \*2 (N.D. Cal. May 9, 2011) (quashing subpoena and noting  
20 exhaustive definitions to words such as “documents” and “identify” serve to further broaden  
21 the subpoena scope unnecessarily). A party or lawyer responsible for issuing a subpoena  
22 therefore must take “reasonable steps to avoid imposing undue burden or expense on a  
23 person subject to the subpoena.” Fed. R. Civ. P. 45(c)(1). In turn, the court “must protect a  
24 person who is neither a party nor a party’s officer from significant expense resulting from  
25 compliance.” Fed. R. Civ. P. 45(d)(2)(B)(ii).

## DISCUSSION

For each of the three categories of information requested, LegalZoom has not met its burden of establishing that it took “reasonable steps” to avoid imposing an undue burden on non-party Google. Fed. R. Civ. P. 45(d)(1).

LegalZoom asserts that it needs documents from Google because it believes there were “significant gaps” and “irregularities” in the production of documents from the defendant, Rocket Lawyer. Dkt. No. 6 at 3. Yet to fill these gaps, LegalZoom demands for a four-year period “any and all documents” relating to Rocket Lawyer free advertisements, “any and all communications” between Google and Rocket Lawyer relating to Rocket Lawyer free advertisements, and “any and all documents” relating to studies managed or performed by a Google entity, Google Ventures, concerning Rocket Lawyer free advertisements. Despite extensive conferring and briefing, LegalZoom has not specified the parameters of the “gaps” that Google needs to fill. What documents did Rocket Lawyer provide? Is there a basis to assert that for specific persons, in specific time periods, Rocket Lawyer did not produce its communications with Google about the free advertisements? Google, and the Court, are left to guess. “There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant.” *Nidec Corp. v. Victor Co. of Japan*, No. 05-cv-0686 SBA (EMC), 249 F.R.D. 575, 577 (N.D. Cal. 2007) (quashing subpoena to non-party where same documents possessed by party).

LegalZoom next contends that it “should be entitled to review documents in Google’s possession as a cross-check against any production previously made by Rocket Lawyer.” Dkt. No. 1 at 13. There is no such entitlement in the Federal Rules of Civil Procedure. To the contrary, the Rules require the requesting party to take “reasonable steps” to minimize burden. Here, that would include assuring that Google was not reproducing significant materials already produced by the party defendant. LegalZoom did not show that it took these reasonable steps.

Finally, LegalZoom asserts that Google’s alleged ties to Rocket Lawyer make it “less than a third party” to the underlying dispute. Dkt. No. 1 at 8. Specifically, LegalZoom

1 states that Google is a “significant investor” in Rocket Lawyer, that Google’s Chief Legal  
2 Officer is on the Board of Directors of Rocket Lawyer, and that the same Officer was  
3 formerly a partner in the law firm representing Google. *Id.* Yet LegalZoom cites no  
4 authority for the proposition that Rules 45 and 26 only protect a non-party like Google if it  
5 is a neutral to the underlying case. In sum, the Court determines that LegalZoom’s  
6 obligation to be reasonable is not excused by its allegations of connections between Google  
7 and Rocket Lawyer.

### 8 CONCLUSION

9 For the reasons described, the Court denies LegalZoom’s motion to compel.

10 Under Rule 45(d)(1), the Court must impose an appropriate sanction on a party or  
11 attorney responsible for issuing a subpoena that violates Rule 45. If Google seeks such a  
12 sanction, it must move within 14 days of this order.

13 Any party may object to this order, but must do so within 14 days. Fed. R. Civ. P.  
14 72(a). Any objection must be directed to District Court Judge Lucy H. Koh, as she was the  
15 general duty judge in this Division on the day the motion to compel was filed.

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17 IT IS SO ORDERED.

18 Date: March 23, 2015

19   
20 Nathanael M. Cousins  
21 United States Magistrate Judge  
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